

COUNCIL COMMUNICATION

Department: Public Works
Case/Project No.: _____
Applicant: _____

Ordinance No. 6036
Resolution No. _____

First Reading
Second Reading

July 13, 2009
July 27, 2009

SUBJECT/TITLE

Consideration of:

- 1). a resolution authorizing the Mayor to execute an agreement with Redflex Traffic Systems Inc., for services associated with the Automated Red Light Enforcement Program.
- 2). a resolution expanding the red light photo enforcement program to 6 additional approaches.
- 3). amending Ordinance 9.16.055 Automated Red Light Enforcement.

BACKGROUND/DISCUSSION

- The city implemented the red light photo enforcement program almost four years ago (August, 2005).
- The first year of operation covered only 11 months with 10,095 tickets issued. Years two and three showed 10,416 and 10,013 tickets issued respectively. This last year of operation is on track to hit about 8,000 tickets.
- It is the opinion of the Police, Public Works, and Legal Departments that the cameras are an effective tool in reducing red light running and improving safety. Statistically the numbers are mixed.
- The Departments recommend not only a continuation of the program but an expansion of locations as well.
- Currently the City has seven approaches:
 - 7th Street and Willow Avenue (Southbound)
 - 8th and Broadway (Eastbound)
 - 8th and Broadway (Westbound)
 - 16th and Broadway (Eastbound)
 - 16th and Broadway (Westbound)
 - 21st and Broadway (Westbound)
 - 35th and Broadway (Eastbound)
- Proposed additional locations are:
 - South Expressway and 30th Avenue (Eastbound)
 - South Expressway and 30th Avenue (Northbound)
 - Kanesville Blvd. and Harrison St. (Eastbound)
 - Kanesville Blvd. and Harrison St. (Westbound)
 - 25th and Broadway (Eastbound)
 - 25th and Broadway (Westbound)

These intersections were selected based on accident history and observed problems with red light running.

- Redflex has performed very well in providing the photo enforcement service. For this reason a new contract is proposed. This contract provides for similar terms to the existing contract.
- The proposed contract is for 7 years (the existing is for 5 years).
The existing fee paid to Reflex is tiered at:

\$50	citations 01-119	paid per month per approach
\$40	citations 120-209	paid per month per approach
\$30	citations 210 +	paid per month per approach

The proposed fee structure is:

\$48	citations 0-100	paid per month per approach
\$40	citations 101-200	paid per month per approach
\$32	citations 201 +	paid per month per approach

- Currently the penalty assessed by the city for automated enforcement of a red light violation is \$65. At the time the program was initiated four years ago this matched the state penalty. Since then the state has increased the penalty twice and currently is \$106 including all court costs and fees.
- Proposed is an ordinance amendment that sets the photo detected red light violation penalty to match whatever the Iowa Code sets for running a red light.

RECOMMENDATION

In summary the Automated Red Light Enforcement Program has been an effective tool in reducing accidents and improving safety. Recommended is approval of

- (1) Resolution approving a seven year agreement with Redflex for the automated red light enforcement program.
- (2) Resolution approving 6 additional approaches for red light photo enforcement.
- (3) Amending Ordinance 9.16.055 changing the civil penalty for violation of automated red light enforcement to equal that set by Iowa Code for failing to obey a red light traffic signal.

ORDINANCE NO. 6036

AN ORDINANCE to amend Chapter 9.16 “Signs and Signals” of the 2000 Municipal Code of Council Bluffs, Iowa, by amending Section 9.16.055 “Automated red light enforcement” to amend the fine to the current schedule fine, including all surcharges and costs, as set by the Iowa Code.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 9.16 “Signs and signals” of the 2000 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by amending Section 9.16.055 “Automated red light enforcement”, to read as follows:

“9.16.055 Automated red light enforcement. (a) General. The city of Council Bluffs, in accordance with the police powers authorized it by the state of Iowa for governing safe traffic flow, may erect or cause to have erected an automated traffic enforcement system for making photographs, video, or digital images of vehicles that fail to obey red light traffic signals at intersections designated by the mayor or his/her designee. The system may be managed by the private contractor that owns and operates the requisite equipment with supervisory control vested in the city’s police department. Photographs, video, or digital images shall be provided to the police department by the contractor for review. The police department will determine which vehicle owners are in violation of the city’s red light ordinance and are to receive a notice of violation for the offense.

(b) Definitions.

(1) “Automated traffic enforcement system” shall mean an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic controller and to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control.

(2) “Vehicle owner” shall mean the person or entity identified by the Iowa Department of Transportation, or registered with any other state vehicle registration office, as the registered owner of a vehicle.

(c) Offense.

(1) The vehicle owner shall be liable for a fine as imposed below if such vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle’s direction is emitting a steady red light or red arrow.

(2) The violation may be rebutted by a showing that a stolen vehicle report was made on the vehicle encompassing the period in question.

(3) The citation will in no event be sent or reported to the Iowa Department of Transportation or similar department of any other state for the purpose of being added to the vehicle owner’s driving record.

(d) Penalty and Appeal.

(1) Any violation of subsection (c)(1) ~~above shall be considered a notice of violation for which a civil fine of sixty-five dollars (\$65.00) shall be imposed, payable as directed on the citation.~~ shall be considered a civil violation for which a civil penalty equal to the current scheduled fine, including all surcharges and costs, as set by the Iowa Code for failing to obey a red light traffic signal shall be imposed, payable as directed on the citation.

(2) A recipient of an automated red light citation may dispute the citation by requesting an issuance of municipal infraction citation by the police department. Such request will result in a required court appearance by the recipient and in the scheduling of a trial before a judge or magistrate at the Pottawattamie County Courthouse. The issuance of a municipal infraction citation will cause the imposition of state mandated court costs to be added to the amount of the violation.

(3) If a recipient of an automated right light citation does not pay the fine by the stated due date or request a trial before a judge or magistrate, a municipal infraction will be issued to the recipient by certified mail from the police department. Said municipal infraction will result in a mandatory court appearance by the recipient as well as imposition of stated mandated court costs.”

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ordinance No. 5870, Section 1 (2005).

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND _____, 2009
APPROVED

ORDINANCE NO. _____

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THOMAS P. HANAFAN Mayor

Attest:

MARCIA L. WORDEN Acting City Clerk

First Consideration: July 13, 2009
Second Consideration: July 27, 2009
Public Hearing: None required
Third Consideration:

Council Communication

Department: Community Development Case No.: URN-09-001 Applicant: Community Development Department	Ordinance <u>6037</u>	City Council: 7/27/09 Planning Commission: 7/14/09 First Reading: N/A Second Reading: N/A Third Reading: N/A						
Subject/Title								
Amendment #2 to the Playland Park Urban Renewal Plan								
Location								
North and south of the I-480 and 41 st Street interchange								
Background/Discussion								
<p><u>Background</u></p> <p>In June of 2003, City Council adopted the Playland Park Urban Renewal Plan in order to accommodate a high rise condominium project, which never materialized. In June of 2005, the urban renewal plan was amended to add additional land and several new projects, including riverfront development, the development of portions of Playland Park and the redevelopment of the Frito Lay and Dodge Park clubhouse areas. The urban renewal plan is again in need of amending, to add new areas along the Missouri River, update proposed project area activities, including costs and public debt and to modify the effective term of the plan.</p> <p><u>Discussion</u></p> <p>On June 22, 2009, the City Council passed a resolution of necessity, which directed staff to initiate the process of amending the Playland Park Urban Renewal Plan and Area. This resolution established the following actions and timeframes:</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding-right: 40px;">July 2, 2009</td> <td>Consultation hearing with affected taxing jurisdictions</td> </tr> <tr> <td>July 14, 2009</td> <td>City Planning Commission hearing and review</td> </tr> <tr> <td>July 27, 2009</td> <td>City Council public hearing</td> </tr> </table> <p>The consultation hearing was held on July 2, 2009 and no individuals or groups appeared at the hearing. Additionally, no written correspondence has been received by the Community Development Department either in support or against the proposed amendment. One resident of the area called for additional information.</p> <p>Iowa statutes require the City Planning Commission to review the amended plan for conformity to the comprehensive plan and to forward a recommendation to City Council prior to public hearing. An amendment to the urban renewal plan conforming to the requirements of Chapter 403 of the Iowa Code has been prepared. This amended plan also conforms to the general development plan of the City as a whole and is attached for your review.</p>			July 2, 2009	Consultation hearing with affected taxing jurisdictions	July 14, 2009	City Planning Commission hearing and review	July 27, 2009	City Council public hearing
July 2, 2009	Consultation hearing with affected taxing jurisdictions							
July 14, 2009	City Planning Commission hearing and review							
July 27, 2009	City Council public hearing							
Staff Recommendation								
The Community Development Department recommends approval of Amendment #2 to the Playland Park Urban Renewal Plan and Area.								
Public Hearing								
Gayle Malmquist appeared before the Planning Commission in favor of the request. No one appeared in opposition.								
Planning Commission Recommendation								
The Planning Commission recommends approval of Amendment #2 to the Playland Park Urban Renewal Plan and Area, as presented.								
VOTE: AYE 9 NAY 0 ABSTAIN 0 ABSENT 2 Motion: Carried								
Attachments								
Amendment #2 to the Playland Park Urban Renewal Plan and Area								
Submitted by: Brenda Carrico, Program Coordinator, Community Development Department								
Approved by: Donald D. Gross, Director, Community Development Department								

ORDINANCE NO. 6037

AN ORDINANCE AMENDING ORDINANCE NOS. 5766 AND 5859, PROVIDING THAT GENERAL PROPERTY TAXES LEVIED AND COLLECTED EACH YEAR ON ALL PROPERTY LOCATED WITHIN THE AMENDED PLAYLAND PARK URBAN RENEWAL PROJECT AREA, IN THE CITY OF COUNCIL BLUFFS, COUNTY OF POTTAWATTAMIE, STATE OF IOWA, BY AND FOR THE BENEFIT OF THE STATE OF IOWA, CITY OF COUNCIL BLUFFS, COUNTY OF POTTAWATTAMIE, COUNCIL BLUFFS COMMUNITY SCHOOL DISTRICT, AND OTHER TAXING DISTRICTS, BE PAID TO A SPECIAL FUND FOR PAYMENT OF PRINCIPAL AND INTEREST ON LOANS, MONIES ADVANCED TO AND INDEBTEDNESS, INCLUDING BONDS ISSUED OR TO BE ISSUED, INCURRED BY THE CITY IN CONNECTION WITH THE AMENDED PLAYLAND PARK URBAN RENEWAL REDEVELOPMENT PROJECT

WHEREAS, the City Council of the City of Council Bluffs, State of Iowa, has heretofore, in Ordinance Nos. 5766 and 4859, provided for the division of taxes within the Playland Park Urban Renewal Project Area, pursuant to Section 403.19 of the Code of Iowa; and

WHEREAS, additional territory now has been added to the Playland Park Urban Renewal Project Area; and

WHEREAS, indebtedness has been incurred by the City, and additional indebtedness is anticipated to be incurred in the future, to finance urban renewal project activities within the amended Playland Park Urban Renewal Project Area, and the continuing needs of redevelopment within the amended Playland Park Urban Renewal Project Area are such as to require the continued application of the incremental tax resources of the amended Playland Park Urban Renewal Project Area; and

WHEREAS, the following enactment is necessary to accomplish the objectives described in the premises.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, STATE OF IOWA, THAT:

Ordinance Numbers 5766 and 5859 are hereby amended to read as follows:

Section 1: For purposes of this Ordinance, the following terms shall have the following meanings:

(a) Original Project Area shall mean that portion the City of Council Bluffs, State of Iowa, described in the Urban Renewal Plan for the Playland Park Urban Renewal Area approved by Resolution No. 03-138 on June 23, 2003, which Original Project Area includes the lots and parcels located within the area legally described as follows:

Lots 174 through 185 in Twin City Gardens an addition to Council Bluffs, Iowa, part of Government Lot 3 and accretions thereto in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28 and in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 and part of Government Lot 1 and accretions thereto in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32 and in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, all in Township 75 North Range 44 West of the 5th Principal Meridian, City of Council Bluffs, Pottawattamie County, Iowa more particularly described as follows:

Begin at the intersection of the West right-of-way line of North 40th Street with the centerline of Avenue B; thence West along the centerline of Avenue B approximately 2,500 feet to the Bulkhead line of the left (Easterly) shoreline of the Missouri River; thence Southerly along said line approximately 1,750 feet to the Southerly right-of-way line of Interstate Route I-480 being the Northerly right-of-way line of Old West Broadway; thence Easterly and Northeasterly along said line approximately 2,000 feet to the Northerly prolongation of the Easterly right-of-way line of 41st Street; thence Southerly along said prolongation and along the Westerly line of the parcel owned by Frito Lay Inc. 298 feet more or less to the South corner of said parcel; thence Northeasterly along the Southeasterly line of Frito Lay parcel 280 feet more or less; thence Southwesterly along the Frito Lay parcel 50 feet; thence Northeasterly along the Frito Lay parcel 670 feet to the East corner of the Frito Lay parcel; and to the Southerly right-of-way line of 37th Street Extension; thence Northwesterly/Westerly, and Southwesterly along said right-of-way line 340 feet more or less to the Southerly prolongation of the West right-of-way line of North 40th Street; thence North along said prolongation and along said line 1,100 feet more or less to the centerline of Avenue B and

the point of beginning. Said Urban Renewal tract contains 67.63 acres more or less.

(b) Amendment No. 1 Area shall mean that portion of the City of Council Bluffs, State of Iowa, described in Amendment No. 1 to the Urban Renewal Plan for the Playland Park Urban Renewal Area approved by Resolution No. 05-186 on June 27, 2005, which Amendment No. 1 Area includes the lots and parcels located within the area legally described as follows except those included in the Original Project Area as set out above:

Lots 174 through 185 in Twin City Gardens an Addition to the City of Council Bluffs, Iowa, part of Government Lot 3 and accretions thereto in the Southwest Quarter of the Southwest Quarter SW1/4SW1/4 of Section 28 and in the Southeast Quarter of the Southeast Quarter SE1/4SE1/4 of Section 29 and part of Government Lot 1 and accretions thereto in the Northeast Quarter of the Northeast Quarter NE1/4NE1/4 of Section 32 and in the Northwest Quarter of the Northwest Quarter NW1/4NW1/4 and Northeast Quarter of the Northwest Quarter NE1/4NW1/4 of Section 33, all in Township 75 North, Range 44 West of the Fifth Principal Meridian, City of Council Bluffs, Pottawattamie County, Iowa, more fully described as follows:

Beginning at the intersection of the westerly right-of-way line of North 40th Street with the centerline of Avenue B;

thence westerly along said centerline of Avenue B, 2,500 feet, more or less, to the easterly high bank of the Missouri River;

thence southerly, along said easterly high bank of the Missouri River, 1750 feet, more or less, to the southerly right-of-way line of Interstate Route I-480, said southerly right-of-way line also being the northerly right-of-way line of Old West Broadway;

thence easterly and northeasterly along said right-of-way lines, 2000 feet, more or less, to a point on the northerly prolongation of the easterly right-of-way line of 41st Street;

thence along said northerly prolongation and along said easterly right-of-way line, South 24 degrees 17 minutes 58 seconds East, 198.93 feet to a point on a northerly line of

property owned by the City of Council Bluffs (Dodge Park Golf Course);

thence along said northerly line, South 65 degrees 46 minutes 10 seconds West, 80.00 feet to a point on the westerly line of the said City of Council Bluffs property;

thence along said westerly line, South 24 degrees 20 minutes 58 seconds East, 303.68 feet;

thence North 80 degrees 28 minutes 59 seconds East, 62.63 feet to a point on a non-tangent curve, concave northwesterly, to which point a radial line bears South 9 degrees 16 minutes 53 seconds East, 257.12 feet;

thence northeasterly, along said curve, through a central angle of 96 degrees 06 minutes 50 seconds, 431.31 feet;

thence North 65 degrees 35 minutes 40 seconds East, 156.25 feet;

thence North 37 degrees 36 minutes 10 seconds East, 87.56 feet;

thence North 69 degrees 17 minutes 02 seconds East, 173.94 feet;

thence South 66 degrees 42 minutes 24 seconds East, 97.62 feet;

thence South 6 degrees 23 minutes 50 seconds East, 518.48 feet;

thence South 0 degrees 09 minutes 15 seconds West, 520.29 feet;

thence South 89 degrees 32 minutes 49 seconds East, 250.00 feet to a point on the southerly prolongation of the westerly line of Ferry Addition to the City of Council Bluffs;

thence along said southerly prolongation, along said westerly line of Ferry Addition and along its prolongation northerly, North 0 degrees 09 minutes 15 seconds East, 1104 feet to a

point on the southerly right-of-way line of the South 37th Street Extension;

thence in a general northwesterly and westerly direction along said southerly right-of-way line, 580 feet, more or less, to the intersection with the southerly prolongation of the westerly right-of-way line of said North 40th Street;

thence northerly, along said southerly prolongation and along said westerly right-of-way line 1050 feet, more or less, to the centerline of said Avenue B and the Point of Beginning.

Said parcel contains an area of 76.53 acres, more or less.

(c) Amendment No. 2 Area shall mean that portion of the City of Council Bluffs, State of Iowa, described in Amendment No. 2 to the Urban Renewal Plan for the Playland Park Urban Renewal Area approved by Resolution No. _____ on July 27, 2009, which Amendment No. 2 Area includes the lots and parcels located within the area legally described as follows:

(SOUTH PARCEL)

A PARCEL OF LAND BEING A PORTION OF THE ACCRETIONS TO GOVERNMENT LOTS 1, 2 AND 3, TOGETHER WITH RIPARIAN RIGHTS IN SECTION 33, TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF WEST BROADWAY (I-480) AND THE EAST RIGHT-OF-WAY LINE OF THE COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE SOUTHERLY ALONG SAID EAST RIGHT-OF-WAY LINE, 2739 FEET (MORE OR LESS) TO A POINT ON THE EASTERLY PROLONGATION OF THE SOUTH BACK-OF-CURB LINE OF HARRAH'S CASINO NORTH PARKING LOT;

THENCE ALONG SAID EASTERLY PROLONGATION, ALONG SAID SOUTHERLY BACK-OF-CURB AND

ALONG IT'S WESTERLY PROLONGATION, SOUTH 64 DEGREES 10 MINUTES 04 SECONDS WEST, 564 FEET (MORE OR LESS) TO A POINT ON THE EAST HIGH BANK OF THE MISSOURI RIVER;

THENCE NORTHERLY, ALONG SAID EAST HIGH BANK, 2516 FEET (MORE OR LESS) TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE OF WEST BROADWAY (I-480);

THENCE EASTERLY, ALONG SAID SOUTH RIGHT-OF-WAY LINE, 675 FEET (MORE OR LESS) TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 25.6 ACRES, MORE OR LESS.

AND

(NORTH PARCEL)

A PARCEL OF LAND BEING A PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER (W1/2 SW1/4) IN SECTION 28 AND A PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER (E1/2 SE1/4) OF SECTION 29, ALL IN TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF AVENUE "B" AND THE EAST RIGHT-OF-WAY LINE OF THE COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE ALONG THE WESTERLY PROLONGATION OF SAID NORTH RIGHT-OF-WAY LINE, 895 FEET (MORE OR LESS) TO A POINT ON THE EAST HIGH BANK OF THE MISSOURI RIVER;

THENCE NORTHERLY, ALONG SAID EAST HIGH BANK, 1666 FEET (MORE OR LESS) TO A POINT ON

THE WESTERLY PROLONGATION OF THE NORTH
RIGHT-OF-WAY LINE OF AVENUE "G";

THENCE ALONG SAID WESTERLY PROLONGATION,
SOUTH 88 DEGREES 34 MINUTES 53 SECONDS EAST,
1369 FEET (MORE OR LESS) TO A POINT ON THE
EAST RIGHT-OF-WAY LINE OF SAID COUNCIL
BLUFFS MISSOURI RIVER LEVEE;

THENCE SOUTHWESTERLY, ALONG SAID EAST
RIGHT-OF-WAY LINE, 1793 FEET (MORE OR LESS) TO
THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 45.87 ACRES,
MORE OR LESS.

(d) Amended Project Area shall mean that portion of the City of Council Bluffs, State of Iowa, included within the Original Project Area, the Amendment No. 1 Area and the Amendment No. 2 Area, which Amended Project Area includes the lots and parcels located within the area legally described as follows:

ORIGINAL AND AMENDMENT NO. 1 AREA

Lots 174 through 185 in Twin City Gardens an Addition to the City of Council Bluffs, Iowa, part of Government Lot 3 and accretions thereto in the Southwest Quarter of the Southwest Quarter SW1/4SW1/4 of Section 28 and in the Southeast Quarter of the Southeast Quarter SE1/4SE1/4 of Section 29 and part of Government Lot 1 and accretions thereto in the Northeast Quarter of the Northeast Quarter NE1/4NE1/4 of Section 32 and in the Northwest Quarter of the Northwest Quarter NW1/4NW1/4 and Northeast Quarter of the Northwest Quarter NE1/4NW1/4 of Section 33, all in Township 75 North, Range 44 West of the Fifth Principal Meridian, City of Council Bluffs, Pottawattamie County, Iowa, more fully described as follows:

Beginning at the intersection of the westerly right-of-way line of North 40th Street with the centerline of Avenue B;

thence westerly along said centerline of Avenue B, 2,500 feet, more or less, to the easterly high bank of the Missouri River;

thence southerly, along said easterly high bank of the Missouri River, 1750 feet, more or less, to the southerly right-of-way line of Interstate Route I-480, said southerly right-of-way line also being the northerly right-of-way line of Old West Broadway;

thence easterly and northeasterly along said right-of-way lines, 2000 feet, more or less, to a point on the northerly prolongation of the easterly right-of-way line of 41st Street;

thence along said northerly prolongation and along said easterly right-of-way line, South 24 degrees 17 minutes 58 seconds East, 198.93 feet to a point on a northerly line of property owned by the City of Council Bluffs (Dodge Park Golf Course);

thence along said northerly line, South 65 degrees 46 minutes 10 seconds West, 80.00 feet to a point on the westerly line of the said City of Council Bluffs property;

thence along said westerly line, South 24 degrees 20 minutes 58 seconds East, 303.68 feet;

thence North 80 degrees 28 minutes 59 seconds East, 62.63 feet to a point on a non-tangent curve, concave northwesterly, to which point a radial line bears South 9 degrees 16 minutes 53 seconds East, 257.12 feet;

thence northeasterly, along said curve, through a central angle of 96 degrees 06 minutes 50 seconds, 431.31 feet;

thence North 65 degrees 35 minutes 40 seconds East, 156.25 feet;

thence North 37 degrees 36 minutes 10 seconds East, 87.56 feet;

thence North 69 degrees 17 minutes 02 seconds East, 173.94 feet;

thence South 66 degrees 42 minutes 24 seconds East, 97.62 feet;

thence South 6 degrees 23 minutes 50 seconds East, 518.48 feet;

thence South 0 degrees 09 minutes 15 seconds West, 520.29 feet;

thence South 89 degrees 32 minutes 49 seconds East, 250.00 feet to a point on the southerly prolongation of the westerly line of Ferry Addition to the City of Council Bluffs;

thence along said southerly prolongation, along said westerly line of Ferry Addition and along its prolongation northerly, North 0 degrees 09 minutes 15 seconds East, 1104 feet to a point on the southerly right-of-way line of the South 37th Street Extension;

thence in a general northwesterly and westerly direction along said southerly right-of-way line, 580 feet, more or less, to the intersection with the southerly prolongation of the westerly right-of-way line of said North 40th Street;

thence northerly, along said southerly prolongation and along said westerly right-of-way line 1050 feet, more or less, to the centerline of said Avenue B and the Point of Beginning.

Said parcel contains an area of 76.53 acres, more or less.

AMENDMENT NO. 2 AREA

(SOUTH PARCEL)

A PARCEL OF LAND BEING A PORTION OF THE ACCRETIONS TO GOVERNMENT LOTS 1, 2 AND 3, TOGETHER WITH RIPARIAN RIGHTS IN SECTION 33, TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF WEST BROADWAY (I-480)

AND THE EAST RIGHT-OF-WAY LINE OF THE
COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE SOUTHERLY ALONG SAID EAST RIGHT-OF-
WAY LINE, 2739 FEET (MORE OR LESS) TO A POINT
ON THE EASTERLY PROLONGATION OF THE SOUTH
BACK-OF-CURB LINE OF HARRAH'S CASINO NORTH
PARKING LOT;

THENCE ALONG SAID EASTERLY PROLONGATION,
ALONG SAID SOUTHERLY BACK-OF-CURB AND
ALONG IT'S WESTERLY PROLONGATION, SOUTH 64
DEGREES 10 MINUTES 04 SECONDS WEST, 564 FEET
(MORE OR LESS) TO A POINT ON THE EAST HIGH
BANK OF THE MISSOURI RIVER;

THENCE NORTHERLY, ALONG SAID EAST HIGH
BANK, 2516 FEET (MORE OR LESS) TO A POINT ON
SAID SOUTH RIGHT-OF-WAY LINE OF WEST
BROADWAY (I-480);

THENCE EASTERLY, ALONG SAID SOUTH RIGHT-OF-
WAY LINE, 675 FEET (MORE OR LESS) TO THE POINT
OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 25.6 ACRES,
MORE OR LESS.

AND

(NORTH PARCEL)

A PARCEL OF LAND BEING A PORTION OF THE WEST
HALF OF THE SOUTHWEST QUARTER (W1/2 SW1/4)
IN SECTION 28 AND A PORTION OF THE EAST HALF
OF THE SOUTHEAST QUARTER (E1/2 SE1/4) OF
SECTION 29, ALL IN TOWNSHIP 75 NORTH, RANGE 44
WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF
COUNCIL BLUFFS, POTTAWATTAMIE COUNTY,
IOWA, BEING MORE FULLY DESCRIBED AS
FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF AVENUE "B" AND THE EAST RIGHT-OF-WAY LINE OF THE COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE ALONG THE WESTERLY PROLONGATION OF SAID NORTH RIGHT-OF-WAY LINE, 895 FEET (MORE OR LESS) TO A POINT ON THE EAST HIGH BANK OF THE MISSOURI RIVER;

THENCE NORTHERLY, ALONG SAID EAST HIGH BANK, 1666 FEET (MORE OR LESS) TO A POINT ON THE WESTERLY PROLONGATION OF THE NORTH RIGHT-OF-WAY LINE OF AVENUE "G";

THENCE ALONG SAID WESTERLY PROLONGATION, SOUTH 88 DEGREES 34 MINUTES 53 SECONDS EAST, 1369 FEET (MORE OR LESS) TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SAID COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE SOUTHWESTERLY, ALONG SAID EAST RIGHT-OF-WAY LINE, 1793 FEET (MORE OR LESS) TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 45.87 ACRES, MORE OR LESS.

Section 2: The taxes levied on the taxable property in the Amended Project Area, legally described in Section 1 hereof, by and for the benefit of the State of Iowa, City of Council Bluffs, County of Pottawattamie, Council Bluffs Community School District, and all other taxing districts from and after the effective date of this Ordinance shall be divided as hereinafter in this Ordinance provided.

Section 3: As to the Original Project Area, that portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts taxing property in the Original Project Area upon the total sum of the assessed value of the taxable property in the Original Project Area as shown on the assessment roll as of January 1, 2002, being the first day of the calendar year preceding the effective date of Ordinance No. 5766, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for the taxing district into which all other property taxes are paid. The taxes so determined shall be referred herein as the "base period taxes" for such area.

As to Amendment No. 1 Area, base period taxes shall be computed in the same manner using the total assessed value shown on the assessment roll as of January 1, 2004, being the assessment roll applicable to property in such area as of January 1 of the calendar year preceding the effective date of Ordinance No. 5859.

As to Amendment No. 2 Area, base period taxes shall be computed in the same manner using the total assessed value shown on the assessment roll as of January 1, 2008, being the assessment roll applicable to property in such area as of January 1 of the calendar year preceding the effective date of this Ordinance.

Section 4: That portion of the taxes each year in excess of the base period taxes for the Amended Project Area, determined for each sub-area thereof as provided in Section 3 of this Ordinance, shall be allocated to and when collected be paid into the special tax increment fund previously established by the City of Council Bluffs, State of Iowa, to pay the principal of and interest on loans, monies advanced to, or indebtedness, whether funded, refunded, assumed or otherwise, including bonds issued under authority of Section 403.9 or Section 403.12 of the Code of Iowa, incurred by the City of Council Bluffs, State of Iowa, to finance or refinance, in whole or in part, urban renewal projects undertaken within the Amended Project Area pursuant to the Urban Renewal Plan, as amended, except that taxes for the regular and voter-approved physical plant and equipment levy of a school district imposed pursuant to Section 298.2, but only to the extent authorized in Section 403.19(2), and taxes for payment of bonds and interest of each taxing district shall be collected against all taxable property within the Amended Project Area without any limitation as hereinabove provided.

Section 5: Unless or until the total assessed valuation of the taxable property in the areas of the Amended Project Area exceeds the total assessed value of the taxable property in the areas shown by the assessment rolls referred to in Section 3 of this Ordinance, all of the taxes levied and collected upon the taxable property in the Amended Project Area shall be paid into the funds for the respective taxing districts as taxes by or for the taxing districts in the same manner as all other property taxes.

Section 6: At such time as the loans, monies advanced, bonds and interest thereon and indebtedness of the City of Council Bluffs, State of Iowa, referred to in Section 4 hereof have been paid, all monies thereafter received from taxes upon the taxable property in the Amended Project Area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

Section 7: All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed. The provisions of this Ordinance are intended and shall be construed so as to continue the division of taxes from property within the Original Project Area and Amendment No. 1 Area under the provisions of Section 403.19

of the Code of Iowa, as authorized in Ordinance Nos. 5766 and 4859, and to fully implement the provisions of Section 403.19 of the Code of Iowa with respect to the division of taxes from property within the Amendment No. 2 Area as described above. In the event that any provision of this Ordinance shall be determined to be contrary to law it shall not affect other provisions or application of this Ordinance which shall at all times be construed to fully invoke the provisions of Section 403.19 of the Code of Iowa with reference to the Amended Project Area and the territory contained therein.

Section 8: This Ordinance shall be in effect after its final passage, approval and publication as provided by law.

PASSED AND APPROVED this _____ day of _____, 2009.

Thomas P. Hanafan, Mayor

ATTEST:

Marcia L. Worden, Acting City Clerk

Read First Time: July 27, 2009 Vote for passage:

Read Second Time: August 10, 2009 Vote for passage:

Read Third Time: _____, 2009 Vote for passage:

PASSED AND APPROVED: _____, 2009

I, Marcia L. Worden, Acting City Clerk of the City of Council Bluffs, State of Iowa, hereby certify that the above and foregoing is a true copy of Ordinance No. _____ passed and approved by the City Council of the City at a meeting held _____, 2009, signed by the Mayor on _____, 2009, and published in the "Daily Nonpareil" on _____, 2009.

Marcia L. Worden, Acting City Clerk
City of Council Bluffs, State of Iowa

(SEAL)

DLILLEBO/ 624478.1 /MSWord10342.091

Council Communication

Department: Community Development		City Council: July 27, 2009 Planning Commission: July 14, 2009 First Reading: July 27, 2009 Second Reading: August 10, 2009 Third Reading:
Case No. ZC-09-005	Ordinance No. <u>6038</u>	
Applicant: Delilah L. Stogdill, et al and Community Development		
Subject Request of Delilah L. Stogdill, et al, 556 Frank Street, Council Bluffs, IA 51503, represented by Jack E. Ruesch, 25 Main Place, Ste 200, PO Box 248, Council Bluffs, IA 51502 to rezone 3506 – 2 nd Avenue (Lot 13, Block 24, Ferry Addition) from C-2 Commercial to R-3/Low Density Multi-Family Residential. The Community Development Department expanded the rezoning request to include 3510 – 2 nd Avenue (Lot 12) which abuts directly on the west.		
Background The above mentioned property is currently zoned C-2 Commercial and is the site of two single family structures. The prior owner of 3506 – 2 nd Avenue is deceased and the estate cannot sell the property because the purchaser cannot get financing due to the current C-2 zoning. The Community Development Department expanded the requested rezoning to include the property to the west (3510 – 2 nd Avenue). The R-3 designation is being requested because it is a natural extension of the existing R-3 zoning to the west. Land uses surrounding the subject properties include multi-family structures to the north and west, commercial uses to the east and south and single family residential to the southwest. Surrounding zoning is shown on the attached map. There has been no comment from LLEM Real Property, c/o Mark Mell, the owner of 3510 – 2 nd Avenue. One property owner within 200 feet requested additional information. No adverse comments have been received from any City department or utility.		
Discussion The requested rezoning is consistent with the Land Use map of the 1994 Comprehensive Plan which shows these properties as Multi-Family Residential and will bring two residential uses into compliance with the Zoning Ordinance.		
Recommendation The Community Development Department recommends rezoning Lots 12 and 13, Block 24, Ferry Addition from C-2 Commercial to R-3/Low Density Multi-Family Residential.		
Public Hearing Jack Ruesch, representing the applicants, appeared before the Planning Commission in favor of the request. No one appeared in opposition.		
Planning Commission Recommendation The Planning Commission recommends rezoning Lots 12 and 13, Block 24, Ferry Addition from C-2 Commercial to R-3/Low Density Multi-family Residential for the reasons cited in the staff report.		
VOTE: AYE 9 NAY 0 ABSTAIN 0 ABSENT 2 Motion: Carried		
Attachments: Map showing proposed rezoning area and surrounding zoning.		
Prepared By: Rebecca Sall, Planning Technician, Community Development Department		



**REQUESTED REZONING
FROM C-2 TO R-3**

CASE #ZC-09-005

ORDINANCE NO 6038

AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF COUNCIL BLUFFS, IOWA, AS ADOPTED BY REFERENCE IN SECTION 15.02.040 OF THE 2005 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY CHANGING THE DISTRICT DESIGNATION OF CERTAIN GROUNDS, PREMISES AND PROPERTY LOCATED AT 3506 2ND AVENUE AND 3510 2ND AVENUE FROM C-2/COMMERCIAL TO R-3/LOW DENSITY MULTI-FAMILY RESIDENTIAL, AS SET FORTH AND DEFINED IN CHAPTERS 15.15 AND 15.10 OF THE 2005 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That the Zoning Map of the City of Council Bluffs, Iowa, as adopted by reference in Section 15.02.040 of the 2005 Municipal Code of the City of Council Bluffs, Iowa, be and the same is hereby amended by changing the district designation of certain grounds, property and premises located at 3506 2nd Avenue and 3510 2nd Avenue, legally described as follows:

Lots 12 and 13, Block 24, Ferry Addition, in Council Bluffs, Pottawattamie County, Iowa,

from its present designation as C-2/Commercial to R-3/Low Density Multi-Family Residential, as set forth and defined in Chapters 15.15 and 15.11 of the 2005 Municipal Code of Council Bluffs, Iowa.

SECTION 2. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. Effective Date. This ordinance shall be in full force and effect from and after its final passage, approval and publication, as by law provided.

PASSED
AND _____, 2009
APPROVED

THOMAS P. HANAFAN Mayor

Attest: _____
MARCIA L. WORDEN Acting City Clerk

FIRST CONSIDERATION: July 27, 2009
SECOND CONSIDERATION: August 10, 2009
PUBLIC HEARING: _____
THIRD CONSIDERATION: _____

Planning Case No. ZC-09-005

Council Communication

Department: Community Development Applicant: Crossroads of Western Iowa Case No. ZT-09-003	Ordinance No. <u>6039</u>	City Council: July 27, 2009 Planning Commission Meeting: July 14, 2009 First Reading: Second Reading: Third Reading:
<p style="text-align: center;">Subject/Title</p> <p>Amend 15.03.271 'Family Home' of the Municipal Code (Zoning Ordinance) as follows:</p> <p>15.03.271 Family home. <i>A community-based residential home licensed:</i></p> <ol style="list-style-type: none"> 01. <i>as a residential care facility under Iowa Code Chapter 135C; or</i> 02. <i>as a child foster care facility under Iowa Code Chapter 237; or</i> 03. <i>as an elder family home under Iowa Code Chapter 231A; or</i> 04. <i>as an elder group home under Iowa Code Chapter 231B; or</i> 05. <i>as a residential care facility under Iowa Code Chapter 135C for not more than eight developmentally disabled persons and any necessary support personnel; or</i> 06. <i>as a child foster care facility licensed under Iowa Code Chapter 237 for not more than eight developmentally disabled children and any necessary support personnel; or</i> 07. <i>and designated under Iowa law as a 'family home'</i> 08. <i>Family home does not mean an individual foster care home licensed under Iowa Code Chapter 237. A family home shall be a permitted use in all residential zoning districts; however, new family homes owned and operated by public or private agencies shall not be located within contiguous city block areas. (Ord. 5222, Sec. 16, 6/12/95)</i> 09. <u><i>a residential home accredited and/or certified by the Iowa Department of Human Services, but not required to be licensed as a health care facility under Iowa Code 135C.6. The home shall provide care for not more than four individuals under a Home and Community Based Service (HCBS) waiver program for persons with mental retardation or other medical assistance programs provided for under Iowa Code Chapter 249A.</i></u> 		
<p style="text-align: center;">Background/Discussion</p> <p>The definition of 'Family Home' includes a variety of State licensed residential uses. The type of residential use operated by the Crossroads of Western Iowa is exempt from the licensing requirement of Iowa Code Section 135C. The use is regulated by the Iowa Department of Human Services and operates as a Home and Community Based Service (HCBS) waiver program. The program is for people with mental retardation or other medical assistance needs.</p> <p>The City definition of 'Family Home' does not include the activities exempted by Iowa Code Chapter 135C. The requested amendment would include such uses in the definition. 'Family Homes' are permitted in all residential zoning districts. The program operated by Crossroads of Western Iowa often rents a residential unit to at least two people at the same location. Multi-family uses are not permitted in all zoning districts which currently limits the locations within the community where Crossroads of Western Iowa can assist with residential needs. The amendment will allow persons served by the waiver program to live and work throughout the Council Bluffs community.</p>		

Recommendation

The Community Development Department recommends amending Title 15 of the Municipal Code (Zoning Ordinance) as follows:

15.03.271 'Family Home' –*A community-based residential home licensed:*

01. *as a residential care facility under Iowa Code Chapter 135C; or*
02. *as a child foster care facility under Iowa Code Chapter 237; or*
03. *as an elder family home under Iowa Code Chapter 231A; or*
04. *as an elder group home under Iowa Code Chapter 231B; or*
05. *as a residential care facility under Iowa Code Chapter 135C for not more than eight developmentally disabled persons and any necessary support personnel; or*
06. *as a child foster care facility licensed under Iowa Code Chapter 237 for not more than eight developmentally disabled children and any necessary support personnel; or*
07. *and designated under Iowa law as a 'family home'*
08. *Family home does not mean an individual foster care home licensed under Iowa Code Chapter 237. A family home shall be a permitted use in all residential zoning districts; however, new family homes owned and operated by public or private agencies shall not be located within contiguous city block areas. (Ord. 5222, Sec. 16, 6/12/95)*
09. *a residential home accredited and/or certified by the Iowa Department of Human Services, but not required to be licensed as a health care facility under Iowa Code 135C.6. The home shall provide care for not more than four individuals under a Home and Community Based Service (HCBS) waiver program for persons with mental retardation or other medical assistance programs provided for under Iowa Code Chapter 249A.*

Public Hearing

The following appeared before the Planning Commission in favor of the request: representing Crossroads of Western Iowa, Brent Dillinger, CEO, 1529 9th Avenue, Council Bluffs, IA 51501; Amy Ebsen, 302 Riordan Street, Crescent, IA 51526; Kim Coffelt, 101 Helen Avenue, Council Bluffs, IA 51503; Mike Kenealy, 2922 Eagle Ridge Drive, Missouri Valley, IA 51555. No one appeared in opposition.

Planning Commission Recommendation

The Planning Commission recommends amending §15.03.271 the definition of 'Family Home' of the Municipal Code (Zoning Ordinance) by adding a new 09., as presented above.

VOTE: AYE 9 NAY 0 ABSTAIN 0 ABSENT 2 Motion: Carried

Prepared by: Rose E. Brown, Urban Planner

ORDINANCE NO. 6039

AN ORDINANCE to amend Chapter 15.03 “Definitions” of the 2005 Municipal Code of Council Bluffs, Iowa, by amending Section 15.03.271 “Family Home”.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 15.03 “Definitions” of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing Section 15.03.271, “Family Home” and by enacting a new Section 15.03.271, “Family Home”, to read as follows:

“15.03.271 Family home. A community-based residential home licensed:

- (1) as a residential care facility under Iowa Code Chapter 135C; or
- (2) as a child foster care facility under Iowa Chapter 237; or
- (3) as an elder family home under Iowa Code Chapter 231A; or
- (4) as an elder group home under Iowa Code Chapter 231B; or
- (5) as a residential care facility under Iowa Code Chapter 135C for not more than eight developmentally disabled persons and any necessary support personnel; or
- (6) as a child foster care facility licensed under Iowa Code Chapter 237 for not more than eight developmentally disabled children and any necessary support personnel; or
- (7) and designated under Iowa law as a ‘family home’.
- (8) Family home does not mean an individual foster care home licensed under Iowa Code Chapter 237. A family home shall be a permitted use in all residential zoning districts; however, new family homes owned and operated by public or private agencies shall not be located within contiguous city block areas;
- (9) a residential home accredited and/or certified by the Iowa Department of Human Services, but not required to be licensed as a health care facility under Iowa Code 135C.6. The home shall provide care for not more than four individuals under a Home and Community Based Service (HCBS) waiver program for persons with mental retardation or other medical assistance programs provided for under Iowa Code Chapter 249A.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ord. 5222 § 16, 1995.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable

from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND _____, 2009
APPROVED

THOMAS P. HANAFAN Mayor

Attest:

MARCIA L. WORDEN Acting City Clerk

First Consideration: July 27, 2009
Second Consideration: August 10, 2009
Public Hearing: _____
Third Consideration: _____

Planning Case ZT-09-003

Council Communication

Department: Legal	Ordinance No.	First Reading July 27, 2009
Case/Project No.	Resolution No. <u>6040</u>	Second Reading Aug. 10, 2009
Applicant.		Third Reading _____
SUBJECT/TITLE		
Ordinance amending Section 3.08.045 to include areas zoned C-3, and to allow amplified music between the hours of 12:00 p.m. and 10:00 p.m.		
BACKGROUND		
An ordinance is being proposed that would amend Section 3.08.045 to allow open air dining in areas zoned C-3 that meet all other requirements set forth in the section. The proposed amendment would also allow amplified music between the hours of 12:00 and 10:00 p.m. This change is being requested to accommodate a new business that will be located at 805 S. Main Street.		
RECOMMENDATION		
Approve the ordinance as proposed.		

Richard Wade

Department Head Signature

Mayor Signature

ORDINANCE NO. 6040

AN ORDINANCE to amend Chapter 3.08 “Beer and Liquor Control” of the 2005 Municipal Code of Council Bluffs, Iowa, by amending Section 3.08.045 “Exceptions to Section 3.08.040(5)”, to include areas zoned as C-3, and to allow amplified music between the hours of 12:00 p.m. and 10:00 p.m.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 3.08 “Beer and Liquor Control” of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing and reenacting Section 3.08.045 “Exceptions to Section 3.08.040(5)”, to read as follows:

“3.08.045 Exceptions to Section 3.08.040(5). (a) Open-air Dining—Exception. If an applicant can establish that approximately fifty (50) percent of its gross revenues are derived, or are likely to be derived from the sale of nonalcoholic food items, and if the establishment is or is to be located in an area zoned C-4, C-3, or in an area zoned C-2 and is not within fifty (50) feet of a residential zone, or a nonresidential area other than C-4 or C-2, and is not within three hundred (300) feet of a residential use or zone. The restrictions established in Section 3.08.040(5) of this chapter, need not apply to the entire premises if the conditions listed above are met. For that portion of the premises which the applicant wishes to exclude from such restrictions, the following restrictions must be complied with:

- (1) It must be so enclosed so that it may only be entered from that portion of the premises which is in compliance with Section 3.08.040(5) of this chapter.
- (2) All exits from such area shall be for emergency use only and shall be equipped with the appropriate hardware to ensure such limited use.
- (3) No amplified music shall be permitted in such area before 12:00 p.m. or after 10:00 p.m..
- (4) No live dancing, such as go-go dancing, strip tease acts or exotic dancing shall be permitted in such area.
- (5) Such area must be approved by the health department for open-air dining.
- (6) Outdoor dining facilities in C-2 zones shall not allow alcohol sales or consumption in their outdoor areas between the hours of twelve midnight and six a.m.

(7) If the application is for an establishment in a C-2 zone, the applicant shall have the duty to notify all property owners within three hundred (300) feet of the premises to be licensed. This notice shall be given in the following fashion: (A) applicant shall establish a list of parties to be notified through utilization of the records of the county auditor; (B) applicant shall prepare envelopes addressed to each of the parties identified in subsection (a)(7)(A) of this section, with the appropriate postage for certified delivery affixed thereto; (C) applicant shall prepare a notice for each of such property owners, advising of the nature of the action which is being sought, including the date it is to be acted upon by the city council; (D) applicant shall deliver all of the above to the city clerk at least ten (10) days prior to the date at which the action is proposed to be taken; (E) it shall be the duty of the city clerk to insert the notices into the envelopes and deliver same to the post office within forty-eight (48) hours of receipt.

(b) Golf-courses—Exception. The restrictions established in Section 3.08.040(5) of this chapter shall not apply to golf courses consisting of fifteen (15) acres or more.

(c) Stadium-type Activities—Exception. For the purpose of this section, a stadium-type activity is a sporting event to which there is controlled access and paid admission. It shall only be permitted in areas zoned nonresidential and shall not be permitted within three hundred (300) feet of a residential use or zone. The restrictions established in Section 3.08.040(5) of this chapter, need not apply to the entire premises if the conditions listed above are met. For that portion of the premises which the applicant wishes to exclude from such restrictions, the following restrictions must be complied with:

(1) It must be enclosed by a fence or a wall at least six feet high.

(2) It must be enclosed so that it may only be entered from that portion of the premises which is in compliance with Section 3.08.040(5) of this chapter.

(3) All exits from such area shall be for emergency use only and shall be equipped with the appropriate hardware to ensure such limited use.

(4) No amplified music shall be permitted in such area.

(5) No live dancing, such as go-go dancing, strip tease acts or exotic dancing shall be permitted in such area.

(d) Special Events—Exception. The restrictions established in Section 3.08.040(5) of this chapter shall not apply to special events as long as they are not held within five hundred (500) feet of a residential use. For purposes of this exception, a special event shall last a maximum of seventy-two (72) hours, and the applicant and location shall only be permitted this exception once annually. This special event exception shall only be permitted if the following restrictions are satisfied:

(1) The applicant has developed a plan to address crowd and traffic control at the special event which has been approved by the chief of police. This approval shall not be

unreasonably denied and, if an applicant's plan is denied, he/she may appeal such denial to the city council by filing with the city clerk a written notice of appeal within ten (10) days of the chief's denial of such plan;

(2) The applicant has developed a plan to comply with state and city health codes which has been approved by the city's director of public health. This approval shall not be unreasonably denied and, if an applicant's plan is denied, he/she may appeal such denial to the city council, as long as notice of such appeal is presented in writing to the city clerk within ten (10) days of the date upon which the director denied such plan;

(3) Premises authorized under this exception shall not be permitted to operate between the hours of twelve midnight and six a.m.;

(4) Applicant's failure to abide by any of these restrictions and the plans approved herein or any other city or state law governing the sale and/or dispensing of alcoholic beverages shall be grounds for the immediate cessation of a special event exception.

(e) PC and A-3—Exception. The restrictions established in Section 3.08.040(5) of this chapter shall not apply to liquor license establishments which are located in either a PC or an A-3 zone as long as the following criteria have been met:

(1) The licensed premises is not within five hundred (500) feet of a residential zone.

(2) Access to the licensed premises is restricted.

(f) For purposes of this section, when determining the distance from a residential use or zone, it will be measured from the property line of the residential use or zone to the actual licensed premises.

(g) For purposes of this section, nonresidential zones shall include those zones for which a residential dwelling is not a principal use.

SECTION 2. REPEALER. All ordinances or parts or ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ordinance No. (Ord. 5882 § 1, 2006).

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage, approval and publication, as by law provided.

PASSED
AND July 27, 2009
APPROVED

THOMAS P. HANAFAN Mayor

Attest:

MARCIA L. WORDEN Acting City Clerk

First Consideration: July 27, 2009
Second Consideration: August 10, 2009
Public Hearing:
Third Consideration

Council Communication

Department:		First Reading <u>July 13, 2009</u> Second Reading <u>July 27, 2009</u> Third Reading _____
Case/Project No.	Ordinance No <u>6035</u>	
Applicant.		
Subject/Title		
AN ORDINANCE amending Chapter 2.08 "Schedule of Fees" of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 2.08.030 "Waiver of fees", and by enacting a new Section 2.08.030 "Waiver of fees" to allow the Mayor to waive parking meter hood fees.		
Background/Discussion		
At the request of Matt Schultz, an ordinance has been prepared that allows the Mayor to waive parking meter hood fees when it is determined to be in the best interests of the City.		
Recommendation		
Pass the ordinance amending Section 2.08.030 "Waiver of fees".		

Submitted by: Dick Wade, City Attorney

ORDINANCE NO. 6035

AN ORDINANCE amending Chapter 2.08 "Schedule of Fees" of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 2.08.030 "Waiver of fees", and by enacting a new Section 2.08.030 "Waiver of fees" to allow the Mayor to waive parking meter hood fees.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 2.08 "Schedule of Fees" of the 2005 Council Bluffs Municipal Code be and the same is hereby amended by repealing Section 2.08.030 "Waiver of fees" and enacting a new Section 2.08.030 "Waiver of fees", to read as follows:

2.08.030 Waiver of fees. The fees contained in the schedule and those authorized by other provisions of this municipal code may be waived by resolution of the city council if it is determined to be in the best interests of the city of Council Bluffs. In addition to this waiver authority of the city council, the mayor may waive parking meter hood fees set out in Section 2.08.060 herein, if he/she determines such a waiver to be in the best interests of the city.

SECTION 2. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ord. 5768 § 2 (part), 2003.

SECTION 3. Severability Clause. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. Effective Date. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND _____, 2009
APPROVED

ORDINANCE NO. _____

PAGE TWO

THOMAS P. HANAFAN

Mayor

Attest: _____

MARCIA L. WORDEN

Acting City Clerk

First Consideration:	<u>July 13, 2009</u>
Second Consideration:	<u>July 27, 2009</u>
Public Hearing:	<u>None required</u>
Third Consideration:	

COUNCIL COMMUNICATION

Department: Public Works Ordinance No. _____ First Reading July 27, 2009
Case/Project No.: FY10-06A Resolution No. _____
Applicant: Greg Reeder, Public Works Director

SUBJECT/TITLE

Consideration of a resolution authorizing the Mayor to execute an agreement with Iowa Department of Transportation for the 29th Avenue Sanitary Sewer Relocation project. IDOT Agreement # U-2009-11238 designated as IDOT Project #IMN-029-3-(65)54-0E-78 (Row) and #IM-029-3(67)52-13-78 (Construction). Project #FY10-06A.

BACKGROUND/DISCUSSION

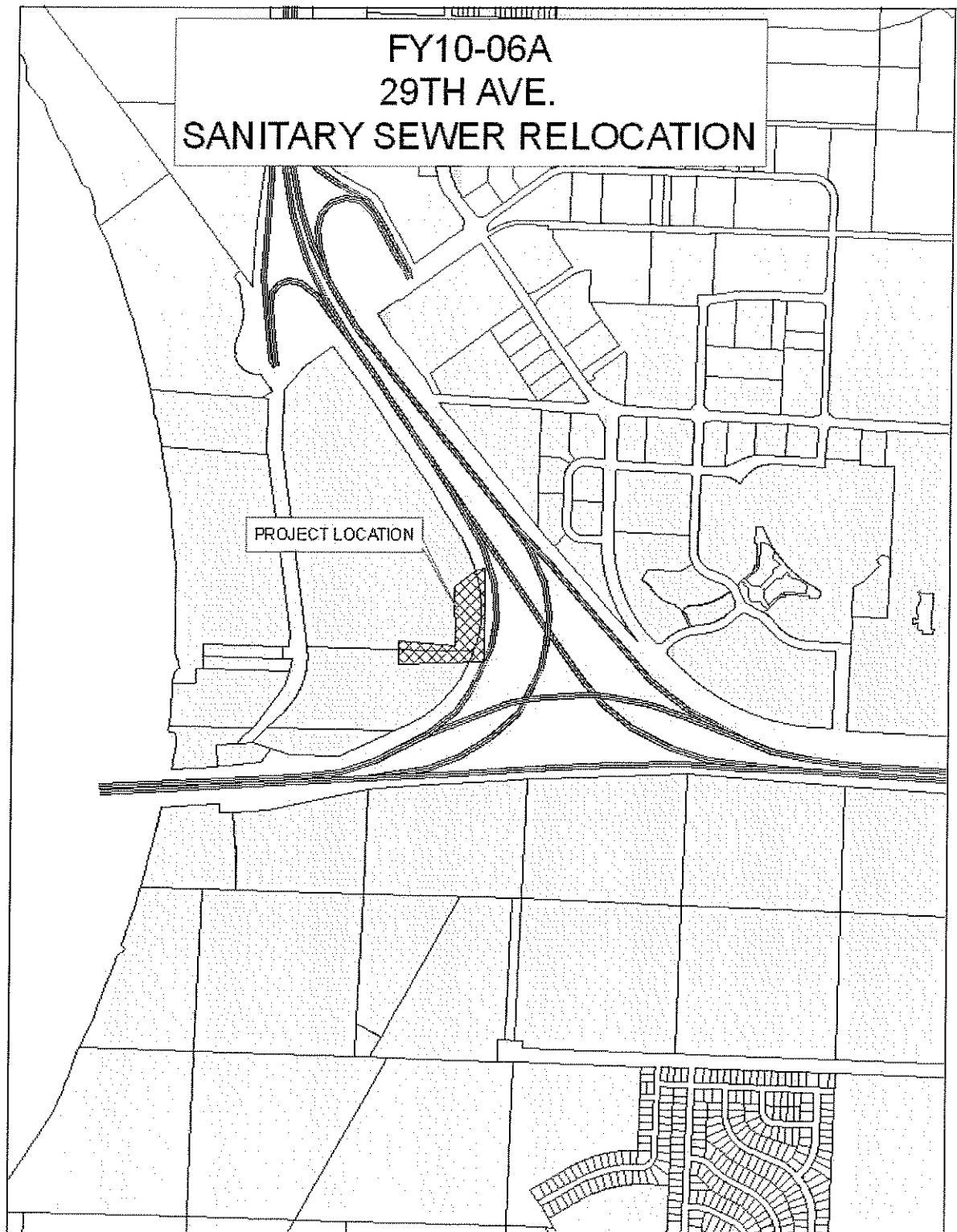
- IDOT is moving forward to complete southbound Interstate 29 to westbound Interstate 80 ramp improvements in fall 2010.
- New IDOT ramp embankment requires existing city sanitary sewer be extended beyond the improvement and replaced outside the improvement per IDOT requirements.
- The project requires 140 LF of extension and 210 LF of sewer relocation. Removal and replacement of sewer gatewell through levee is also part of the project. Levee relocation efforts will be within IDOT embankment project.
- This agreement outlines the responsibilities of IDOT and the City for city sanitary sewer relocation reimbursement for the west system interchange improvements.
- The initial cost of the project, estimated at \$1,441,000 would be funded by the city. IDOT will reimburse the city 97% or \$1,398,000 of the cost. The City's \$43,000 share of the project will be funded with sales tax.
- Project requires easement swap per agreement. City vacation of existing easement will be handled under separate resolution to council upon receipt of new easement from IDOT.
- This project is FY10-06A in the CIP and is programmed for construction completion July, 2010.

RECOMMENDATION

Approval of this resolution.

Greg Reeder, Public Works Director

FY10-06A
29TH AVE.
SANITARY SEWER RELOCATION



RESOLUTION
NO 09-219

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
WITH IOWA DEPARTMENT OF TRANSPORTATION FOR THE 29TH AVENUE
SANITARY SEWER RELOCATION PROJECT. IDOT AGREEMENT # U-2009-11238
DESIGNATED AS IDOT PROJECT #IMN-029-3-(65)54-0E-78 (ROW) AND #IM-029-
3(67)52-13-78 (CONSTRUCTION).
FY10-06A**

- WHEREAS, the city to make improvements known as
 29th Avenue Sanitary Sewer Relocation, within the city,
 as therein described; and
- WHEREAS, IDOT has submitted an agreement to provide reimbursement
 for the work necessary for said improvements; and
- WHEREAS, the city council deems approval of said agreement to be
 in the best interest of the City of Council Bluffs.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Clerk are hereby authorized and directed to execute an agreement with Iowa Department of Transportation for 29th Avenue Sanitary Sewer Relocation.

ADOPTED
AND
APPROVED July 27, 2009

Thomas P. Hanafan, Mayor

ATTEST:

Marcia L. Worden, Acting City Clerk



Iowa Department of Transportation

AGREEMENT

Agreement No. U-2009-11238

IT IS AGREED, by and between the State of Iowa, Iowa Department of Transportation, Highway Division (hereafter DOT), and City of Council Bluffs, a municipal corporation, with offices in Council Bluffs, Iowa, (hereafter CITY) as follows:

1. The DOT shall proceed with proposed highway improvements on Interstates 29 and 80 in accord with its plans and specifications, which the DOT has designated as Project IMN-029-3(65)S4-0E-78 (ROW) IM-029-3(67)S2-13-78 (CONST). The plans and specifications are made a part of this agreement.
2. Sanitary sewer facilities owned and operated by the CITY located on its own easements upon privately owned land affected by the project shall be abandoned/removed and adjusted in accordance with attached Exhibit "A".
3. CITY easements upon land affected by the project shall be conveyed to the State of Iowa without additional expense to the project other than the relocation or adjustment costs contemplated under this agreement.
4. The total estimated cost occasioned by the project in relocating CITY facilities and DOT participation in such costs is shown on attached Exhibit "B" \$1,440,990.00.
5. The CITY agrees to perform the work specified in relocating its facilities, and further certifies:
 - a. It is financially capable of performing the work prior to being reimbursed;
 - b. The work shall be done by qualified, properly trained and experienced personnel;
 - c. The work shall be done within the prescribed time to meet the project construction schedule;
 - d. It is aware of all applicable work requirements and administrative rules imposed by the Federal Highway Administration and Iowa DOT.
6. This agreement is subject to the following provisions which are incorporated by reference as a part of this agreement: 1) The provisions of the Federal Aid Policy Guide 23 CFR 645, Subparts A and B, dated November 22, 2000, and any amendments thereto; 2) the provisions of the Iowa DOT Highway Division "Utility Accommodation Policy", revised and adopted 2005; 3) all other applicable state or federal laws, regulations, or directives and any amendments thereto.
7. In accordance with the 2005 Utility Accommodation Policy, this Agreement by itself does not constitute a permit nor does it grant permission to occupy the primary highway right of way. Where facilities are to be located on or across the right of way, the CITY is responsible for obtaining a permit from the DOT Engineering Operations Technician prior to commencing work within the right of way.
8. The CITY hereby acknowledges receipt of notice and waives further notice required by law.

Iowa Department of Transportation

9. Upon execution of this agreement CITY will proceed with reasonable promptness to solicit bids for the work. Upon receipt of written authorization by the DOT to proceed the CITY agrees to commence removal of its facilities and to make the necessary adjustments and relocations. Notice to proceed will be given by the DOT coincident with review of a contract award proposal for the work and a tabulation of bids furnished by the CITY.
10. The CITY shall proceed to relocate its facilities in a satisfactory manner that will not interfere with the highway project. The CITY shall notify the DOT Resident Construction Engineer of the date on which CITY work begins in the project area and of the anticipated completion date. It will also inform the DOT when each phase of the work is actually completed.
11. Work and operations to be done by the CITY consist of the following phases:
 - a. Engineering for the work proposed at the preliminary and construction stages;
 - b. Removal/abandonment and adjusting of sanitary sewer facilities crossing Interstate 29 at approximately station number 9491.
 - c. Work will begin approximately August 1, 2009, weather permitting.
 - d. Work duration will be approximately ten months, weather permitting.
 - e. Work completion will occur approximately July 1, 2010, weather permitting.
12. All work performed pursuant to this agreement shall comply with Title 49-C.F.R.-Transportation-Part 21-Nondiscrimination in Federally Assisted Programs of the Department of Transportation.
13. The CITY shall initially pay all costs for its work occasioned by the project and upon completion, the CITY shall provide the DOT with an itemized statement of such costs in accordance with Federal Aid Policy Guide 23 CFR 645A and as required by the DOT, specifying all costs which are reimbursable. Said statement shall specify the highway project number and the DOT approval date of this agreement. CITY accounting shall follow the accounting procedure prescribed by state and federal regulations.
14. Upon satisfactory completion of the work and upon receipt and approval of the itemized statement from the CITY, the DOT shall initially pay the CITY for all eligible costs. This amount shall not exceed ninety-seven percent (97%) of either (1) the reimbursable amount claimed, or (2) \$1,440,990.00 whichever is less.
15. Without further compensation other than performance by the DOT of its obligations hereunder, the CITY shall execute and deliver to the DOT, on forms supplied by the DOT, a Disclaimer of Interest in Realty in and to all right of way acquired by the DOT for said project.
16. After further audit by the DOT, a final payment shall be made to the CITY equal to the difference between the total eligible costs and the amount previously reimbursed. In the event justifiable audit exceptions result in overpayment through prior reimbursements, the CITY will promptly refund to the DOT any overpayment previously made.

Iowa Department of Transportation

17. The CITY and its contractors or subcontractors where applicable, shall maintain all books, documents, accounting records, supporting cost proposals, and other evidence pertaining to costs incurred and make such material available at their respective offices at all reasonable times during the period of this agreement and for three years from the date of final payment under this agreement for inspection by the DOT, Federal Highway Administration, or any authorized representative of the federal government and copies thereof shall be furnished if requested.
18. Future construction, repair, replacement, or maintenance of the CITY's facilities within highway right of way shall be performed by the CITY in accordance with the Iowa Department of Transportation's Utility Accommodation Policy, as revised and adopted in 2005, and with any revisions or supplements subsequently issued thereto.
19. If difficulties or delays arise which, in the opinion of the DOT, make it impractical to proceed with the proposed highway improvement, the DOT may cancel this agreement by written notification to the CITY and this agreement shall become null and void, provided such notification is given prior to advisement by the DOT to proceed with the project work.
20. If any clause herein is declared invalid, it shall not void the entire agreement.
21. This agreement may be executed and delivered in two or more counterparts, each of which so executed and delivered shall be deemed to be an original.

Iowa Department of Transportation

IN WITNESS WHEREOF the Parties hereto have caused this agreement to be executed by their duly authorized officers on the dates below indicated.

Executed by the CITY this _____ day of _____, 2009

CITY OF COUNCIL BLUFFS, IOWA

By _____
(Print Name/Title)

State of _____

ss

County of _____

This instrument was acknowledged before me on this _____ day of _____, 2009,
by _____, as _____ of _____
(Name) (Title) (CITY)

Notary Public in and for said State

Executed by the Iowa Department of Transportation this _____ day of _____, 2009

STATE OF IOWA
IOWA DEPARTMENT OF TRANSPORTATION

By _____
Charlie Purcell, Director
Office of Local Systems

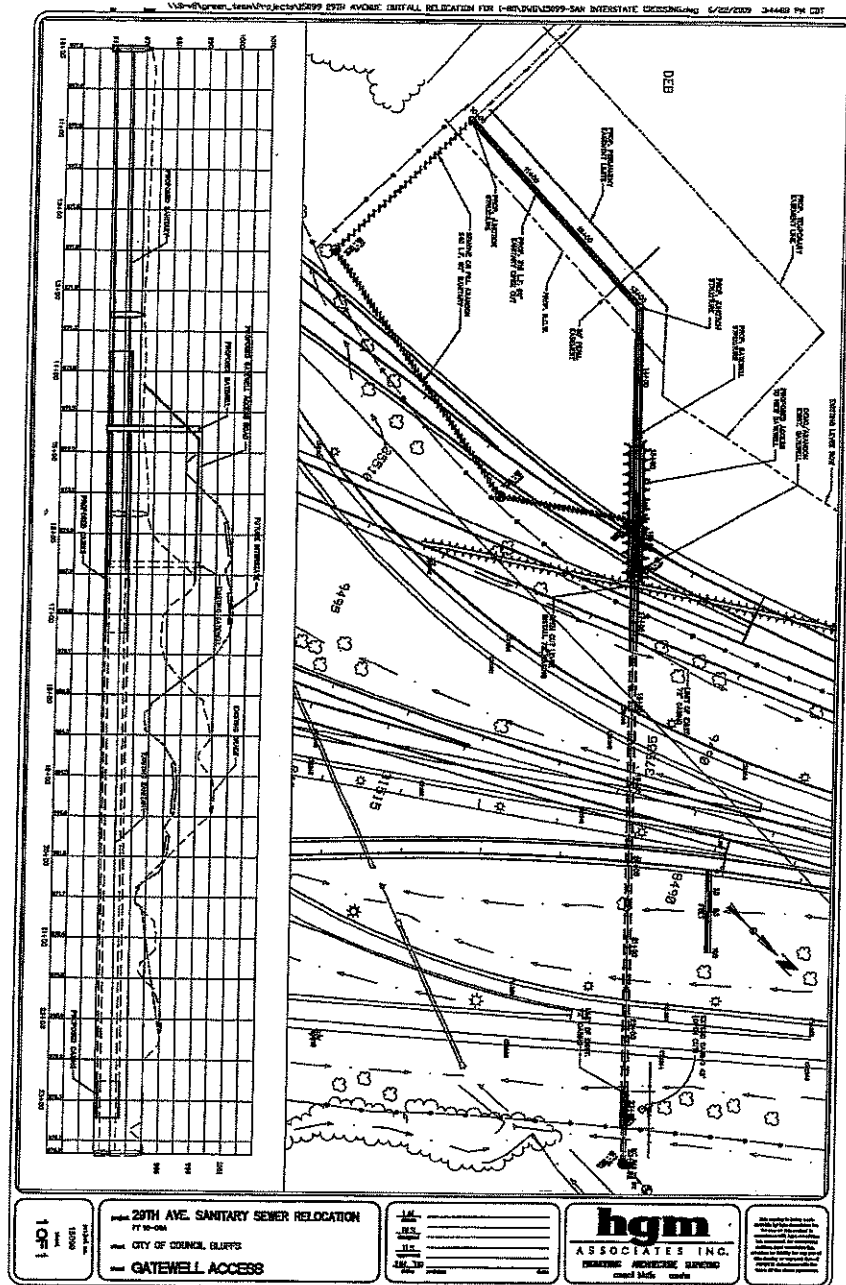
State of Iowa

ss

County of Story

This instrument was acknowledged before me on this _____ day of _____, 2009,
by Charlie Purcell, as Director, Office of Local Systems of the Iowa Department of Transportation.
(Name) (Title)

Notary Public in and for said State



ENGINEER'S PRELIMINARY OPINION OF PROBABLE CONSTRUCTION COST

29th Avenue Outfall Relocation

for I-80/I-29 Reconstruction

Segment 2

City of Council Bluffs, Iowa

City Project No. FY 10-06A

HGM Project No. 15099

June 18, 2009

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	TOTAL AMOUNT
1.	Traffic Control	1.00 LS	\$10,000.00	\$10,000.00
East Side				
2.	Extend 72" Casing on 60" Sewer to ROW	45.00 LF	\$800.00	\$36,000.00
3.	Dewatering	45.00 LF	\$100.00	4,500.00
West Side				
4.	Dewatering	710.00 LF	\$50.00	\$35,500.00
5.	By-pass Pumping	1.00 LS	100,000.00	100,000.00
6.	Extend 72" Casing to Old Gatewell	140.00 LF	800.00	112,000.00
7.	Demolition of Old Gatewell	1.00 LS	10,000.00	10,000.00
8.	Construct New Gatewell Structure and Appurtenances	1.00 LS	250,000.00	250,000.00
9.	Construct Portion of Relocated Levee Access to New Gatewell	12,000.00 CY	15.00	180,000.00
10.	Open Cut 60" Sewer with 72" Casing	210.00 LF	600.00	126,000.00
11.	Open Cut 60" Sewer	360.00 LF	400.00	144,000.00
12.	Sewer Junction Structure	2.00 EA	15,000.00	30,000.00
13.	Remove / Abandon Old 60" Sewer	735.00 LF	40.00	29,400.00
Subtotal:				\$1,067,400.00
Contingency (20%):				\$213,480.00
Subtotal:				\$1,280,880.00
Design and Construction Engineering (15%):				\$160,110.00
TOTAL:				\$1,440,990.00

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Page 1 of 1

EXHIBIT-B